

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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STEPHANIE GILMORE, DARRYL GILMORE,

Plaintiffs,

-against-

TROY HOUSING AUTHORITY, JOHN DOE U.S.  
MARSHALS, NYPD, U.S. MARSHAL MIKE WARNER,  
TROY HOUSING AUTHORITY OFFICER  
MCCLAUGHLIN,

Defendant.

**ANSWER TO CO-  
DEFENDANT TROY  
HOUSING AUTHORITY  
OFFICER MCCLAUGHLIN'S  
CROSS CLAIMS ON  
BEHALF OF DEFENDANT  
CITY OF NEW YORK**

16-CV-1048 (DNH) (DJS)

Jury Trial Demanded

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Defendant New York City Police Department ("NYPD")<sup>1</sup>, by its attorney, Zachary W. Carter, Corporation Counsel of the City of New York, for its answer to the cross-claims of co-defendant Troy Housing Authority Officer McLaughlin, respectfully alleges, upon information and belief, as follows:

1. Defendant City of New York repeats and realleges each and every paragraph of its answer to plaintiffs' Complaint, dated February 3, 2017, as if fully set forth herein, including all affirmative defenses set forth therein.

2. Denies the allegations set forth in paragraph "32" of defendant Troy Housing Authority Officer McLaughlin's Answer to the Complaint.

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<sup>1</sup> The New York City Police Department ("NYPD") is a non-suable entity. See N.Y. City Charter ch. 17, § 396 ("[A]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the City of New York and not in that of any agency, except where otherwise provided by law."); see also Jenkins v. City of New York, 478 F.3d 76, 93 (2d Cir. 2007) ("The district court correctly noted that the NYPD is a non-suable agency of the City.").

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

3. The cross-claims fail to states a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

4. The cross-claims may be barred by the applicable statute of limitations.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

5. Co-defendant McLaughlin's cross-claims against defendant City of New York are not ripe for adjudication.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

6. Defendant City of New York has not violated any rights, privileges, or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant violated any Act of Congress providing for the protection of civil rights.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

7. Any injury alleged to have been sustained resulted from plaintiffs' and/or co-defendant McLaughlin's and/or the Troy Housing Authority's culpable or negligent conduct and/or the culpable or negligent conduct of others and was not the proximate result of any act of defendant City of New York.

**WHEREFORE**, defendant City of New York requests judgment dismissing the cross-claims of defendant McLaughlin in their entirety, together with the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Dated:       New York, New York  
                February 1, 2017

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By:        /s/  
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Special Federal Litigation

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CLAIMS ON BEHALF OF DEFENDANT CITY OF  
NEW YORK**

**ZACHARY W. CARTER**

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*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2017*

*..... Esq.*

*Attorney for .....*